

C O N F I D E N T I A L SECTION 01 OF 03 BAGHDAD 003088

SIPDIS

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TAGS: PREL PGOV KDEM IZ

SUBJECT: TNA PASSES CONSTITUTION REFERENDUM LAW BUT SOME SCRAMBLING TO FIX VAGUE LANGUAGE

REF: BAGHDAD 3017

Classified By: Political Counselor Robert Ford.

Reasons 1.4(b) and (d)

11. (C) Summary. The TNA passed the law governing the procedures for the October 2005 constitutional referendum on July 24 but failed to clarify whether the use of the Arabic term "nakhibeen" means "those who vote" or "those on the voter list." The manner in which the terms was let vague gives rise to suspicions that Shia politicians were trying an end run around a provision in the TAL that gives minorities like Kurds and Sunni Arabs more leverage over the constitution. TNA Legal Committee Chairman Mushen Saadoon assured PolOff July 25 that the TNA did not want to change the Arabic language found in Article 61(C) of the TAL. The Independent Electoral Commission of Iraq (IECI) reacted negatively and asked UNAMI to intervene on IECI's behalf. Embassy will encourage IECI to interpret "nakhibeen" the way IECI prefers and the way it was intended in the TAL, as "those who vote." We also learned July 25 that the Presidency Council will issue a clarification that the vague language is to be interpreted as "those who vote" - thus re-establishing beyond question the balance in the TAL. In our own contacts, we will point out to Iraqi politicos that any possible, misguided attempts to strip away the three-governorate "veto" clause would be very unhelpful. A translation of the law follows. End Summary.

TNA PASSES WITH AMBIGUITIES

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12. (C) The TNA passed the draft referendum law on July 24 but failed to clarify whether the use of the Arabic term "nakhibeen" means "those who vote" or "those on the voter list." If the Presidency Council does not reject the draft within 15 days, it will become law. Article 4 of the draft referendum law copies Article 61(C) of the TAL in Arabic in its entirety, including use of the term "nakhibeen." Thus, the possible ambiguity of the Arabic term "nakhibeen," passed into the new referendum law. In the English version, Article 61(C) states, "The general referendum will be successful and the draft constitution ratified if a majority of the voters in Iraq approve and if two-thirds of the voters in three or more governorates do not reject it." The TAL intends that "voters," or "nakhibeen", mean "those who vote," rather than "those on the voter list," or "those eligible to vote."

13. (C) During the 17 July TNA session, Shia Coalition parliamentarians Saad Qindell and Asamaa Al-Musawi argued that the correct translation of "nakibeen" is "constituents" or "those on the voter list." Without explanation, Da'wa parliamentarian Nuri Kamel added that the interpretation "those who vote" could be used by people "who want to stop the constitution." The discussion ended without the resolution of this issue, and TNA Speaker Hassani closed the debate by stating that the matter would be clarified with the UN. PolOff July 18 cautioned TNA Legal Committee Chairman Mushen Saadoon that the TAL intended the term "voters," as defined in Article 61(C), only to include "those who vote." A different interpretation, i.e. defining "voters" as "those eligible to vote," would have the negative effect of stripping away the three-governorate "veto" provision specifically inserted in the TAL to protect minority groups. Saadoon at this July 18 meeting agreed with this position and assured PolOff that the final draft subject to vote by the TNA would clarify that "voters" meant "those who vote."

14. (C) After the July 24 vote, Saadoon told PolOff that the TNA did not want to change the Arabic language found in Article 61(C). He said that he would cooperate with the Independent Electoral Commission of Iraq (IECI) to ensure that the term "nakhibeen" is properly understood to mean "those who vote."

IECI UPSET

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15. (C) IECI Commissioner Safwat was disturbed that the TNA did not change the word for "voter" or clarify that the term "nakhibeen" means only "those who vote". He told Poloff on July 24 that IECI would be subject to political and legal challenges without this clarification. Safwat asked the acting United Nations electoral team leader to speak with SRSG Qazi and requested that he intervene on IECI's behalf. Safwat also is considering calling a meeting with the international diplomatic community to request assistance. (COMMENT: IECI is very upset because it has been pushing the TNA for a clarification of this term. IECI is uncomfortable operating within perceived legal ambiguities, but Post will encourage IECI to interpret "nakhibeen" the way IECI prefers -- and as the TAL intended -- as "those who vote." We will also remind Iraqi politicos that any attempts to take away the three-governorate "veto" clause are unacceptable and misguided. Insisting that "nakhibeen" mean "those who are on the voter list" makes it more difficult for the referendum to pass because a majority of the registered voters would have to vote "yes" rather than only a majority of those who actually vote. END COMMENT.)

#### ISSUING A CLARIFICATION

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16. (C) Poloff touched base again on July 26 with Safwat who said that he met with the TNA late July 25. Safwat said he had received assurances that the TNA would clarify the term "voters" to mean those who vote. Separately, Deputy President Adel Abdel Mehdi told us July 25 that the law as passed and the vague definition was not helpful. He said that the Presidency Council would issue a clarification when it approves the law that the term "voters" means those who vote, not those registered.

#### THE FINAL DRAFT

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17. (C) A translation of the final draft of the referendum law provided by TNA Legal Committee Chairman Mushen Saadoon on July 24 follows.

Begin Text.

In the Name of God, the most gracious and the most compassionate.

Draft of referendum law on the project of Constitution

Article 1  
The referendum process on the project of constitution starts on Saturday Oct 15, 2005 by giving the opinion on the following question: (Do you agree on the project of the constitution) the answer would be either Yes or No.

Article 2  
Voting on the question of the referendum would be through general, direct and secret balloting.

Article 3  
The person is eligible for voting in the referendum when such conditions are met:

11. He has to be Iraqi or included in Article 11 of the TAL;

12. His birth date must be on or before 31 December 1987; and

13. He has to be registered to be able to vote according to the rules issued from the Independent Iraqi Elections Committee.

Article 4  
The referendum is successful and the project of the constitution is to be endorsed when the majority of the voters in Iraq accept it and if two-thirds of the voters in three or more governorates do not reject it.

Article 5  
The Independent Iraqi Elections Committee undertakes implementing the referendum process and it is in charge of releasing the necessary rules.

Article: 6  
This law is to be enforced from the date of publishing it in the official gazette.

The Reasons

In order to organize the process of the referendum on the project of constitution, this law was enacted.

End Text.

18. (U) REO HILLAH, REO BASRAH, REO MOSUL, and REO KIRKUK, minimize considered.

Khalilzad